EXHIBIT 39

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE)
WHOLESALE PRICE)
LITIGATION)MDL Docket No.
)Civil Action 01CV12257PBS

DEPOSITION UPON ORAL EXAMINATION OF

DOROTHY POULSEN

9:00 a.m

February 22, 2006

PERKINS COIE

1201 Third Avenue, #4800

Seattle, Washington 98101

REPORTED BY: Judith A. Robinson, CCR #2171

BY MS. O'SULLIVAN:

Q. Mrs. Poulsen, the court reporter has handed you what's been marked Exhibit Poulsen 001. It's a 1-page document, Bates number at the bottom, NT013240. A Bates number is a lawyer's phrase for a number on a document --

A. Okay.

Q. -- that Mr. Lopez' firm put on that.

I'd like you to turn your attention to the second half of Exhibit Poulsen 001 where it says, "From Dorothy Poulsen."

Do you see that?

A. Yes.

Q. What is this document?

A. It's an Email between me and Cody, who is the pharmacy program officer in Minnesota. I don't know if he was yet at this point but he became eventually. Yes. He was at this point.

Q. If I could try to make my question even more clear, is the bottom 1/3 of the document something from you to NMPAAtalk at listbot.com?

A. It is, yes.

Q. I think I'll show you a document and make it easier.

A. Yeah. Make it clear so I know what you're talking about.

BY MS. O'SULLIVAN:

Q. Exhibit Poulsen 005 is a multi-page document Bates numbered MT004034 to 4043. The first page of which is entitled, "Testimony Outpatient Drugs, January 6, 1998."

And it was produced to us attached to the next document, which follows, "Notice of Public Hearing of Proposed Adoption and Amendment."

A. Okay.

Q. I first want to ask you about the very first page. But please take your time looking through the exhibit.

A. (Witness complies.)

MR. LOPEZ: Again, I'll note for the record, this appears to be a compound exhibit.

THE WITNESS: Yes.

BY MS. O'SULLIVAN:

Q. Okay.

A. I guess I hadn't thought of this being testimony. This would have been a rule hearing. One of my responsibilities was, to make sure that the rules -- what do you call it? The State rules that we operated under were current and clear and so forth.

And so in this -- in this case, we were making some changes to the -- the rules that were applied, you know, State rules and regulations that applied to the pharmacy program.

I think, specific -- probably what we were doing and probably what instigated this was a change in the dispensing fee. That was generally the thing that caused us to change rules was a change in the -- a change in reimbursement.

Q. Does the first page of Exhibit Poulsen 005 reflect the testimony that you gave at a public rule hearing in January 1998?

A. Yes. This would have been what I presented.

Q. Now that I know how to ask the question properly, did you testify before other hearings

program in these cases is the dispensing fee rather than the drug product."

What did you mean by that?

MR. LOPEZ: Object to form. It reads the line out of context.

BY MS. O'SULLIVAN:

Q. And I -- I don't intend to do so. I'm asking what you meant by it?

A. I think I know what I'm referring to here.

For generic drugs, there was a MAC pricing, a Federal pricing limit that would minimize the cost to the program. And generic drugs could be very, very cheap. Especially per unit, it could be very, very cheap.

If a pharmacy was dispensing on a daily basis or on a weekly basis or maybe even on a biweekly basis, then the -- the -- what we paid in a dispensing fee might be more than what we were paying for in the drug.

So if the drug was 2 cents a pill and we were paying them $4.14, every time they dispensed a -- dispensed for the prescription and if they only

took one pill a day, we were paying 2 cents for the drug and $4.14 for the dispensing fee.

So the idea was to try to make sure that they dispensed on a monthly basis, rather than a less-frequent basis. Especially on medications that were chronic medications, where they were going -- acute diseases that require only a 1-week or 2-week prescription. That was one thing.

But -- but it's -- as this testimony says, that -- referring to nursing home patients, use the same drugs for months and years. So to dispense on a less-than-monthly basis would be unfair to the program.

Q. Looking at the bottom paragraph on the first page of Exhibit Poulsen 005, 4 lines down there's a sentence that begins, "Part" and I'm going to read the whole sentence:

"Part(2)(b) changes the cap for the dispensing to $4.14 to reflect the provider increase passed by the legislature."

A. Yes.

Q. Do you recall what the dispensing fee was

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"The pharmacy should always bill their usual and customary charge regardless of what Medicaid pays," was that an accurate statement?

A. Yes.

Q. Where you wrote:

"Montana Medicaid adjudicates claims and calculates an allowed reimbursement according to the prices present on the Medicaid drug file," was that accurate as well?

A. Yes.

Q. What are you referring to by the "Medicaid drug file"?

A. Consultec's PBM that adjudicated our claims had a listing of all the drugs with pricing on it. And that is what we used and that is what I referred to as the Medicaid drug file. It differentiates -- I don't know all the ways it differentiated from their files for other groups because they were at PBM for more than just Medicaid. But the Federal upper limits, I don't think would have been specific to Medicaid.

Q. If a pharmacist billed his or her usual

and customary charge and that was lower than the price present on the Medicaid drug files that Consultec's PBM had, Medicaid should have reimbursed the pharmacy at the usual and customary charge?

A. Exactly. If the system was working properly, that's what it would have done.

Q. Do you know the percentage of reimbursement by Montana Medicaid made at the usual and customary?

A. No.

Q. Who would know that?

A. I don't -- that would be a question -- you would have to have Consultec go through and assess their claim system.

Q. Consultec/ACS' data would show that?

A. Yeah. Well, even then what the -- the only way you would know -- well, I don't know of any way that you would know for sure that someone was billing at their usual and customary. That's what they were told to do.

If the reimbursement came in lower than what it paid, but that's not true. Because if they

billed higher, that also could be usual and customary. I'm not sure how you would -- how you would determine it. If anybody would know, it would be the PBM.

Q. And your understanding was, it wasn't the Consultec/ACS people in Helena but it was their PBM?

A. It definitely wasn't the people in Helena. The people Helena knew nothing about the PBM at the time that I was doing it. It was all done through Atlanta.

Q. Did you have any interaction with the Consultec ACS/PBM people?

A. Yes.

Q. What is the name or names of people at that PBM who should be knowledgeable about billing that came in at usual and customary versus what was in the Medicaid drug file?

A. The only name I can remember is Leslie Bratton. And I know she's not even there anymore. I don't remember names.

Q. You heard the name, Brett Jackovac. Was he in the Helena office?

A. Yes.
Q. You can put that away.(Indicating)
As the pharmacy program officer for Montana Medicaid, did you have any responsibility regarding reimbursement for physician-administered drugs?
A. No.
Q. Who did have that responsibility?
A. Randy Bowsher, B-O-W-S-H-E-R.
Q. I have some specific follow-up questions on that.
We were told that was Randy Bowsher's responsibility. And we took his deposition last week and he said, no, actually, you would be the knowledgeable person.
So let me follow up.
A. Sure.
Q. What was Randy Bowsher's responsibility with respect to physician-administered drugs?
A. He was a program officer for the physician program. And -- okay. So that's what he was.
MR. LOPEZ: I'm going to object to the

the claims processing when there were issues with claims. And -- and she was the one -- that person was generally a she. She was the one who would frequently come and ask me to look up a particular drug and tell them what the AWP was on it.

Q. Who were those people?

A. Well, the only name that comes to mind is Fran. But I mean, it was a series of people. It was a series of -- there was more than one person who came up.

Q. I have an October 20th, 2000 DPHHS org. Chart.

A. Okay.

Q. Will you please take a look at it? I'm not going to make an exhibit. But see if there's -- if any name on there is a person who assisted Mr. Bowsher with physician-administered drugs' reimbursement?

A. I don't think this goes deep enough. I don't even -- I don't even see my name on this. Yeah. This doesn't go down far enough.

Q. We've asked the State's lawyers to tell us

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who that knowledgeable person would be.

Were you familiar with the reimbursement methodology for physician-administered drugs?

A. Well, only to the extent that I worked with them. I mean -- which was not to any great extent.

Q. And to that extent at a general level, could you describe the reimbursement methodology?

A. For their drugs. The physician would bill in they had provided a number of units of a particular drug and they would provide a charge.

Q. Is it fair to say, that was different than the reimbursement methodology for pharmacy-dispensed drugs?

A. Oh, yes.

Q. When you talk about the physician submitting units and a charge, do you know whether that was an actual charge? I mean, do you know what that charge represented?

A. No, actually I don't.

Q. Do you know the basis on which Montana Medicaid would have reimbursed the physician for

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